MONTANA LEGISLATIVE HISTORY

Chapter 142 19 89

Bill H 39 S _____ Original bill & history X C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 8	✓ C	Hearing Date(s)	Feb 10	✓ C
	Jan 9	✓ C		Mar 5	✓ C
		C			C
		C			C
Date Out	Jan 9	✓ C		Mar 5	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

2/02 TRANSMITTED TO GOVERNOR
2/05 SIGNED BY GOVERNOR
CHAPTER NUMBER 4 EFFECTIVE DATE: 10/01/87

HB 35 INTRODUCED BY PETERSON
SUBMISSION OF CANDIDATE NAMES 40 DAYS BEFORE SCHOOL ELECTIONS

1/05 INTRODUCED
1/05 REFERRED TO EDUCATION & CULTURAL RESOURCES
1/09 HEARING
1/10 COMMITTEE REPORT--BILL PASSED AS AMENDED
1/13 2ND READING PASSED 82 17
1/14 3RD READING PASSED 87 10

TRANSMITTED TO SENATE
1/21 REFERRED TO EDUCATION & CULTURAL RESOURCES
3/11 HEARING
3/18 TABLED IN COMMITTEE

HB 36 INTRODUCED BY BRADLEY
NURSING LICENSURE REVISION

1/05 INTRODUCED
1/05 REFERRED TO HUMAN SERVICES & AGING
1/15 HEARING
1/22 COMMITTEE REPORT--BILL NOT PASSED AS AMENDED
1/23 ADVERSE COMMITTEE REPORT ADOPTED 76 18

HB 37 INTRODUCED BY BRADLEY
DEFENDANT'S RECORD EXPUNGED UPON DISMISSAL OF CHARGES

1/05 INTRODUCED
1/05 REFERRED TO JUDICIARY
1/09 HEARING
1/12 COMMITTEE REPORT--BILL PASSED AS AMENDED
1/14 2ND READING PASSED 93 3
1/15 3RD READING PASSED 94 5

TRANSMITTED TO SENATE
1/21 REFERRED TO JUDICIARY
2/10 HEARING
3/06 COMMITTEE REPORT--BILL CONCURRED
3/10 2ND READING CONCURRED 50 0
3/12 3RD READING CONCURRED 50 0

RETURNED TO HOUSE
3/16 SIGNED BY SPEAKER
3/17 SIGNED BY PRESIDENT

3/18 TRANSMITTED TO GOVERNOR
3/22 SIGNED BY GOVERNOR
CHAPTER NUMBER 147 EFFECTIVE DATE: 10/01/87

HB 38 INTRODUCED BY PAVLOVICH
REVISING VETERANS' AND HANDICAPPED PERSONS' EMPLOYMENT PREFERENCE ACT

1/05 INTRODUCED
1/05 REFERRED TO STATE ADMINISTRATION
1/05 FISCAL NOTE REQUESTED
1/15 FISCAL NOTE RECEIVED

HOUSE BILL NO. 37

INTRODUCED BY BRADLEY

IN THE HOUSE

JANUARY 5, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 12, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 13, 1987	PRINTING REPORT.
JANUARY 14, 1987	SECOND READING, DO PASS.
JANUARY 15, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 94; NOES, 5.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 21, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 6, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 10, 1987	SECOND READING, CONCURRED IN.
MARCH 12, 1987	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 13, 1987	RECEIVED FROM SENATE.
	SENT TO ENROLLING.

HOUSE BILL NO. 37

INTRODUCED BY BRADLEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT A DEFENDANT'S RECORD IS EXPUNGED AFTER DEFERRED IMPOSITION; AND AMENDING SECTION 46-18-204, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-204, MCA, is amended to read:

"46-18-204. Dismissal after deferred imposition. Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed. Upon dismissal of the charges, the clerk of the court shall send an order directing the department of justice to expunge the defendant's record."

-End-

INTRODUCED BILL
HB 37

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on Thursday, January 8, 1987 at 10:00 a.m. in Room 312-D of the State Capitol Building.

ROLL CALL: All members were present with the exception of Representative Tom Hannah and Representative Joan Miles.

HOUSE BILL NO. 37: (An Act To Clarify That A Defendant's Record Is Expunged After Deferred Imposition; And Amending Section 46-18-204, MCA). The chief sponsor, Representative Dorothy Bradley, of District No. 79, and representing the Montana magistrate association, testified. She read the statute and presented the committee with a memo to her from Mr. Michael Miller of the Montana department of justice, identification bureau. (See Exhibit A).

SUPPORTERS: Mr. Tim Haynes, from Hamilton, a lobbist for the Montana Magistrate Association, recommended that line 18 be amended and that a formal petition to expunge be used by the state-wide court system. (See Exhibit B). He stated this bill is intended to clear up the department of justice's records. He added that he is referring to the misdemeanor offender level and not the felony level.

Mr. Michael Miller, representing the Department of Justice, Identification Bureau, supports this bill.

Mr. Haynes asked the committee to consider letting Representative Leo Giacometto, who was formerly a Montana justice of the peace, look over the bill and clarify the amendments.

Chairman Lory requested that Mr. John MacMaster, attorney from the Legislative Council and Rep. Giacometto review the bill and report back to the committee on any amendments.

Representative Al Myers questioned Mr. Haynes as to how he identified repeat offenders. He stated that prior to sentencing, a presentence report is done by the probation officer and it lists the defendant's complete record.

Representative Tom Bulger requested that the committee review the state of California's petition to expunge.

There being no further proponents or opponents testifing, Chairman Lory asked Rep. Bradley if she wished to close the meeting and she favored doing so.

No action was taken until the amendments can be reviewed.

ADJOURN: There being no further business, the meeting was adjourned at 10:55 a.m.

Earl Lory

EARL LORY, Chairman

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 8, 1987

NAME	PRESENT	ABSENT	EXCUSED
EARL LORY (R)	✓		
JOHN MERCER (R)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓	—	
TOM BULGER (D)	✓		
JOHN COBB (R)	✓		
FRITZ DAILY (D)	✓		
PAULA DARKO (D)	✓		
RALPH EUDAILY (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
ED GRADY (R)	✓		
TOM HANNAH (R)		✓	
VERNON KELLER (R)	✓		
AL MYERS (R)	✓		
JOAN MILES (D)		✓	
PAUL RAPP-SVRCEK (D)	✓	—	
BILL STRIZICH (D)	✓	—	
JOHN McMASTER			

CS-30

EXHIBIT A
DATE 1/8/87
HB No. 37

STATE
OF
MONTANA

DEPARTMENT OF JUSTICE

Identification Bureau
303 Roberts, Helena, Montana 59620 (406) 444-3625

January 7, 1987

MEMO

To: Ms. Dorothy Bradley - Legislative Council

From: Mr. Michael J. Miller - Identification Bureau

Re: Amendment to House Bill #37

A Bill for an Act entitled: "An act to clarify that a defendant's record is expunged after deferred imposition; and amending section 46-18-204, MCA."

For the purpose of complete and accurate information gathering on the part of the Montana State Identification Bureau it is requested that House Bill #37 be amended to read, "Upon the dismissal of the charges, the clerk of court shall send an order directing the department of justice to expunge the defendant's record, and that that court order shall include complete identifiers such as sex, race, date of birth, charge at arrest, current charge status and the local agency arrest number for the charge being expunged."

EXHIBIT B
DATE 4/8/87
HB No. 37

IN THE [redacted] COURT OF [redacted] JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

The People of the State of California, Plaintiff

vs.

[redacted] Defendant(s)

Case No. [redacted]

CII No.

PETITION AND ORDER UNDER P.C. 1203.4 or P.C. 1203.4a

PETITION To Expunge

I, the undersigned, say: that I am [redacted] (ATTORNEY / PROBATION OFFICER FOR) the defendant in the above-entitled criminal action, who was convicted of the misdemeanor offense of violation of Section [redacted]

of _____ on [redacted] (DATE).

(applicable items checked)

☒ Probationary Sentence (P.C. 1203.4)

That probation was granted on the terms and conditions set forth in the docket of the above entitled court; that the defendant is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and that the defendant has

☒ fulfilled the conditions of probation for the entire period thereof; Please refer to attached letter.

☐ been discharged from probation prior to the termination of the period thereof.

☐ Other Sentence (P.C. 1203.4a)

That probation was not granted; that more than one year has elapsed since the date of pronouncement of judgement; that defendant has complied with the sentence of the court; that defendant is not serving a sentence for any offense nor under charge of commission of any crime, and has since said pronouncement of judgment lived an honest and upright life, and conformed to and obeyed the laws of the land.

Wherefore petitioner hereby requests that defendant be permitted to withdraw his plea of guilty, or that the verdict or finding of guilt be set aside and that a plea of not guilty be entered and that the court dismiss this action pursuant to Section 1203.4 of the Penal Code.

Executed on February 2, 1983 (DATE) at Hamilton (PLACE) Montana, California.

I declare under penalty of perjury that the foregoing is true and correct.

ORDER

It appearing to the court from the records on file in this case, and from the foregoing petition, that the defendant herein is eligible for the relief requested.

It is hereby ordered that the plea, verdict, or finding of guilt in the above-entitled action be set aside and vacated and a plea of not guilty be entered; and that the complaint be, and is hereby dismissed. Further, if this order is granted pursuant to the provisions of 1203.4 the defendant is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency.

Dated /s/ 4/5/83

/s/ Leslie W Light (JUDGE)

DISTRIBUTION: ORIGINAL TO FILE; 1 COPY TO DEFENDANT; 2 COPIES TO ARRESTING AGENCY WHO WILL FORWARD ONE TO D.O.J.; 1 COPY TO PROBATION OFFICER, IF ON FORMAL PROBATION.

PETITION AND ORDER UNDER P.C. 1203.4 or P.C. 1203.4a

Mr. MacMaster replied that it does look funny but what we have right now is this bill. If the amendments are adopted it will not be law until it passes the house, senate and is signed by the governor. Until that time, in looking at it there is nothing amended. Once the governor signs the bill that will be the law and these sections will read differently and will in effect amend the first ten (10) sections of the bill. Presently, sections 6-10 will go into effect on July 1, 1987, and the drinking age will be 21 and no one will be grandfathered in and we will get the highway funds. If the effective date is amended to May 1, 1987, then the grandfather clause is saved and Montana will get the highway funds.

Rep. Grady stated that the people of Montana have overwhelmingly voted to raise the drinking age and he wants to listen to the people of his district.

There being no call for a roll call vote, Chairman Lory asked for a hand vote and HB #21 with Rep. Brown's first set of amendments were DO PASS WITH AMENDMENTS, 10-5.

Rep. Brown offered his second set of amendments. (Exhibit E). This set of amendments would require the change of the effective date. Chairman Lory asked Mr. MacMaster about the effective date change. Mr. MacMaster stated the change in the effective date was made throughout the bill and the result is that they will be effective since April 1, 1987. A hand vote was taken on this amendment and all members with the exception of one voted in favor of the amendment.

A discussion followed regarding the rule making authority of the Department of Revenue.

Rep. Daily questioned the department's authority. Mr. MacMaster explained that the past legislature passed a law giving them rule making authority.

Rep. Miles stated that the department does have rules to follow and we must have the date to reflect the grandfathering clause.

Rep. Addy motioned to do pass with amendments. The motion was seconded and all but two members voted in favor to DO PASS WITH AMENDMENTS.

ACTION ON HOUSE BILL NO. 37: Rep. Giacometto moved that this bill pass as amended. (Exhibit F). It was motioned and seconded. A hand vote was taken and all members with the exception of Rep. Hannah and Rep. Daily voted DO PASS AS AMENDED.

EXHIBIT F
DATE 1-9-87
HB # 37

Passed

AMENDMENTS TO HB 37, INTRODUCED COPY, PROPOSED BY REP. GIACOMETTO

1. Page 1, line 18.
Strike: "clerk of the"

2. Page 1, line 20.
Following: "record."
Insert: "The order must adequately identify the defendant, such as by sex, race, date of birth, and the current status of the charges to be expunged."

AHB37A/SH/JH1

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 9, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

STANDING COMMITTEE REPORT

January 9 19 87

Mr. Speaker: We, the committee on JUDICIARY

report House Bill No. 37

☒ do pass ☐ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

Chairman

"AN ACT TO CLARIFY THAT A DEFENDANT'S RECORD IS EXPUNGED AFTER DEFERRED IMPOSITION; AND AMENDING SECTION 46-18-204, MCA."

1. Page 1, line 18.
Strike: "clerk of the"

2. Page 1, line 20.
Following: "record."
Insert: "The order must adequately identify the defendant, such as by sex, race, date of birth, and the current status of the charges to be expunged."

First reading copy (White color)

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 10, 1987

The twenty-fifth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 10, 1987 by Chairman Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL 37: Representative Dorothy Bradley, House District 79, Bozeman, introduced HB 37, which amends the law relating to sentencing of criminal defendants. She gave examples of a youth who was convicted of reckless driving. The court asked that he do community service as a fine, and the charge would be dismissed. She said when the youth was asked by an employer if he had ever been convicted of anything, the youth said no, which was technically right, but the employer looked up the youth's records, and the offense had never been taken off his record, and he lost the job.

PROPONENTS: Jim Haynes, Magistrates Association, supports the bill.

OPPONENTS: There were none.

DISCUSSION OF HOUSE BILL 37: Senator Halligan asked if the Magistrates are going to make the extra document for this bill and follow it closely. Rep. Bradley said it is at the magistrates request, so they must agree to it.

Senator Mazurek asked if the record of the arrest would be expunged. Rep. Bradley said she wanted the whole record clean. Jim Haynes said the magistrates wanted the complete record clean on the level of the Dept. of Justice, so if a person wanted to enter the service, his record would be clean. He didn't want to see the arrest expunged from the sheriff's department because the magistrates are not going to tell the sheriff how to handle his files.

Representative Bradley closed the hearing on House Bill 37.

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date Feb 10th

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

they are probably still breaking the law. Mr. Chisholm said the introduced bill would not give "point blank" credit, the judge has to make a clear decision on this.

Represenative Addy closed.

The committee adjourned for executive action.

ACTION ON HB 236: Senator Crippen asked what is defined as "notice". Senator Mazurek asked to whom does one give notice to. Senator Yellowtail said on line 23 and 24 for notice it refers to after the resignation day has been verified by the Chief Justice. Senator Crippen moved to have an effective date of "on passage and approval". The motion CARRIED.

Senator Mazurek asked Valencia to talk to Bill Leaphart Sr. about how the judicial nomination committee works.

ACTION ON HB 326: Senator Crippen agreed with Mr. Chisholm to put the bill back in its original form. Senator Crippen moved to put the bill back in its original form before the House Judiciary amended it. The motion CARRIED. (see STANDING COMMITTEE REPORT) Senator Crippen moved the bill BE CONCURRED IN AS AMENDED. The motion CARRIED.

ACTION ON HB 53: Senator Crippen said the bill repeals the fund to keep maintainance of the Old Supreme Court Chamber up. The committee decided to work on this bill, because of that repealer.

ACTION ON HB 37: Senator Halligan said if interested parties don't go through the computers for records, they will be going to the county attorney and the justice of the peace to get them, which will cause more problems. Senator Pinsoneault didn't think the bill would accomplish anything, but it wouldn't hurt. Senator Pinsoneault decided to move the bill BE CONCURRED IN. The motion CARRIED with Senator Halligan and Senator Galt voting no.

ACTION ON HB 95: Senator Halligan moved the bill NOT BE CONCURRED IN. Senator Mazurek said the problem with the bill is the elimination of the annual accounting precedure except with people over 65. The motion CARRIED unanimously.

Chairman

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 5

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown		X	
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

March 5 87
19

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on

having had under consideration HOUSE BILL 37 No

Third blue
reading copy ( ) color

~~AMENDMENTS~~

Defendant's record expunged upon dismissal of charges.
M Bradley (Pinsoneault)

Respectfully report as follows: That HOUSE BILL 37 No

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Chairman.

Senator Mazurek